IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1842 OF 2004

IN

SUIT NO.1674 OF 2004

Mrs.Chandra Khubchand Kandhari. .... Plaintiff.

vs.

Manubhai Chhotalal Parikh. ... Defendant.

Ms.P.G.Bhatia, for plaintiff.

Ms.Snehal Modi, for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 28th April,2005

P.C.:-

1. This is a Notice of Motion taken out by the plaintiff. The plaintiff has filed this suit claiming declaration that defendant is a rank trespasser in a flat owned by the plaintiff and the plaintiff has also claimed decree of possession against the defendant. The plaintiff has also claimed damages against the defendant. According to the plaintiff, she is owner of the suit flat

and that one Chhotubhai Ratilal Parikh was the original tenant of the flat. The plaintiff was away from India and during that time the tenant died and taking advantage of that situation, defendant entered into the possession of the flat and he continues to reside in the flat unauthorisedly. The defence of the defendant is that the tenant was treating him as a member of the family and therefore, he has inherited the tenancy. It is not the case of the defendant that he is in any way related to the tenant either by blood or by marriage. The learned Counsel for defendant also claims that the defendant was adopted as son by the tenant, but she is not in a position to point out any averments in the written statement about any adoption ceremony or any adoption deed. In the absence of any relationship between the defendant and the original tenant, the defendant cannot be a member of the tenant's family and therefore, cannot claim that he has inherited the tenancy.

2. It prima facie appears that the defendant has no right to be in possession of the flat and his occupation of the flat is totally unauthorised. In this view of the matter therefore, in my opinion, it would be appropriate to appoint receiver on the flat. The Notice of Motion is granted in terms of prayer clause (a) excluding bracketed portion.

3. The Receiver initially shall take symbolic possession of the flat and offer to the defendant agency of the receiver to be in possession of the flat on usual terms and conditions including payment of royalty. If the defendant

does not execute agency agreement within a period of six weeks from the date on which it is offered to him, the receiver shall take physical possession of the flat, if necessary, by taking police help and deliver the flat in possession of plaintiff, also as agent of the receiver but without security and royalty.

4. Till the receiver takes possession, ad-interim order in terms of prayer clause (c) shall operate.

Notice of Motion disposed of.